

Date of Hearing: April 17, 2018

ASSEMBLY COMMITTEE ON AGING AND LONG-TERM CARE

Ash Kalra, Chair

AB 2744 (Reyes) – As Amended April 12, 2018

**SUBJECT:** Residential care facilities for the elderly: referral agencies.

**SUMMARY:** Requires referral agencies providing referrals to residential care facilities for the elderly (RCFEs) to register with the Department of Social Services (DSS), and sets forth a number of requirements for these referral agencies. Specifically, **this bill:**

- 1) Requires referral agencies providing referrals to residential care facilities for the elderly (RCFEs) to register with the Department of Social Services (DSS), and sets forth a number of requirements for these referral agencies.
- 2) Prohibits a referral agency from providing a referral to a facility unless it is registered with DSS pursuant to provisions of this bill.
- 3) Requires DSS to issue a registration number to a referral agency that does all of the following:
  - a) Provides DSS with specified contact information and proof of compliance with the requirements set forth by this bill; and,
  - b) Pays a registration fee in an amount to be determined by DSS that does not exceed the amount necessary to cover the reasonable costs of registration.
- 4) Requires a registered referral agency to inform DSS within 30 days of a change in any contact information or proof of compliance supplied to the department as a condition of registration, as specified.
- 5) Requires registration to be renewed every two years and, further, requires DSS to establish a renewal fee at an amount that does not exceed the amount necessary to cover the reasonable costs of registration.
- 6) Authorizes DSS to levy civil penalties on referral agencies pursuant to current law regarding civil penalties levied on RCFEs, as specified.
- 7) Establishes within the State Treasury a Residential Care Facility Referral Agency Fund into which all fees established and civil penalties levied pursuant to the provisions of this bill are required to be deposited and from which the Legislature may appropriate monies to be used by DSS for the purposes of this bill.
- 8) Requires a referral agency to provide a client with a disclosure prior to providing a referral that includes certain pieces of information in clear language including: a statement explaining whether the referral fee will be paid by the facility or by the client, the referral agency's privacy policy, a list of the contact information for all facilities to which the referral agency has supplied the name of the client or potential resident, instructions on how to file a complaint with DSS about a referral agency, among other pieces of information, as specified.

- 9) Permits the required disclosure that the referral agency must provide to a client to be made orally, provided the referral agency makes an audio recording with the client's consent and later provides the client with a written disclosure.
- 10) Requires, if a referral agency has an Internet Web site, that agency to prominently display on the first page, before the client is asked to sign up for services or agree to terms, a number of pieces of information, including, as specified: the referral agency's name and registration number, a statement acknowledging that a facility may be required to pay a fee to the agency for a referral, all conditions the client will be required to agree to, and a link to all state agency Internet Web sites listing complaints about facilities.
- 11) Requires a referral agency to display its name and registration number on all advertising, promotions, or marketing material and on all documents it uses to conduct business.
- 12) Prohibits a referral agency from doing any of the following:
- a) Selling placement information to a facility or marketing affiliate without obtaining affirmative consent from the client on each occasion;
  - b) Referring a client to a facility in which the referral agency or an immediate family member of the referral agency has an ownership interest;
  - c) Contacting a client who has made a request in writing that the referral agency cease contact; and,
  - d) Holding any power of attorney for a client or potential resident or holding a client's or potential resident's property in any capacity.
- 13) Requires an employee of a referral agency who will be in direct contact with a potential resident to obtain either a criminal record clearance or a criminal record exemption, as specified, prior to initial contact with a potential resident.
- 14) Defines, for purposes of provisions of this bill, "suitability determination" to mean a determination made by a referral agency that the services offered by a facility appropriately meet the needs of a potential resident based on requested level of care, facility costs and the financial means of the client or potential resident, the social needs and preference of the potential client, and the geographic location of the client and potential resident, as specified.
- 15) Requires a referral agency to conduct a suitability determination for each potential resident.
- 16) Requires a referral agency to provide a disclosure to a client indicating the number of hours of annual training required of all employees who make referrals to facilities. This disclosure shall indicate if the following topics are covered by training which may include topics related to RCFE regulation, resident processes and procedures, medical and behavioral health needs of the elderly, recognizing and reporting elder abuse, health conditions that are restricted or prohibited in RCFEs, and resident's rights.
- 17) Requires the agreement between a referral agency and a client to allow the client to cancel the agreement at any time, provided the client does not use the services of a facility to which the client was referred, and prohibits the client from being required to pay a referral fee in any instance in which the client declines to use the facility to which the client was referred by the referral agency.

- 18) Stipulates that, if a client is referred to a facility and the referral agency has been paid by the facility for the referral, that transaction is complete.
- 19) Permits a client to notify a referral agency, in writing, of the desire to use another referral agency in the future and to terminate the agreement.
- 20) Requires a contract between a referral agency and a facility to include, as specified:
  - a) Authorization for either party to cancel the agreement, and provisions prohibiting a referral agency from collecting compensation from a subsequent facility, and states that a facility is a subsequent facility if the potential resident was previously in a facility referred by the referral agency, but then left that facility and a new referral agency referred the potential resident to the current facility.
- 21) A contract between a referral agency and a facility shall include an authorization for either the facility or the referral agency to cancel the agreement. The contract may provide specific payment terms regarding pending fees or commissions.
- 22) Authorizes a facility to rely on a client's written declaration attesting to the referral agency used by the client and stipulates that the facility shall not be required to pay a fee to any other referral agency.
- 23) Prohibits an employee, independent contractor, or other person acting on behalf of a government agency, health care facility, or other health care institution from offering, providing, or accepting any type of compensation or other benefit for referring patients, clients, or customers to a facility or referral agency, as specified.
- 24) Requires, as of July 1, 2019, a referral agency to maintain liability insurance coverage of at least \$1,000,000 per person per occurrence and \$2,000,000 in total annual aggregate for negligent acts or omissions by the referral agency or any of its employees.
- 25) Establishes owners, operators, and employees of referral agencies as mandated reporters, as specified.

**EXISTING LAW:**

- 1) Establishes the California Community Care Facilities Act to provide for the licensure and regulation of community care facilities.
- 2) Defines "community care facility" to mean any facility, place, or building that is maintained and operated to provide nonmedical residential care, day treatment, adult day care, or foster family agency services for children, adults, or children and adults, including, but not limited to, individuals with physical disabilities or mental impairments and abused or neglected children. Includes within this definition, among a number of other facilities: adult day programs, foster family homes, small family homes, full-service adoption agencies, and short-term residential therapeutic programs.
- 3) Requires community care facilities operating in California, as specified, to have a valid license.

- 4) Establishes the California Residential Care Facility for the Elderly (RCFE) Act, which requires facilities that provide personal care and supervision, protective supervision, or health related services for persons 60 years of age or older who voluntarily choose to reside in those facilities to be licensed by DSS.
- 5) Defines “residential care facility for the elderly” (RCFE) to mean a housing arrangement chosen voluntarily by individuals who are 60 years old or older, or by their authorized representative, where varying levels and intensities of care and supervision, protective supervision, personal care, or health-related services are provided, as specified.
- 6) Enumerates the rights of RCFE residents, as specified.
- 7) Establishes a civil penalty structure for various RCFE licensing violations, as specified.
- 8) Defines the roles and responsibilities of mandatory reporters, who are individuals required to report any observations or knowledge of abuse or neglect to the appropriate parties, as specified.

**FISCAL EFFECT:** This bill has not yet been analyzed by a fiscal committee.

**COMMENTS:**

**Author’s Statement:** “As a result of the growing scope of elder care in California, the law needs to ensure that referral agencies, who are working with our most vulnerable populations, are providing services that meet reasonable and ethical standards. In addition, it is critical that they have knowledge of both the needs of the person being referred and the conditions and capabilities of the assisted living facility.”

**Community Care Licensing:** Within DSS, the Community Care Licensing Division (CCLD) is responsible for the licensure and regulation of a variety of community care facilities, which are defined in state law as “any facility, place, or building that is maintained and operated to provide nonmedical residential care, day treatment, adult day care, or foster family agency services for children, adults, or children and adults, including, but not limited to, the physically handicapped, mentally impaired, incompetent persons, and abused or neglected children” (Health and Safety Code 1502). Community care facilities include adult day programs, foster family agencies, foster family homes, social rehabilitation facilities, transitional shelters, group homes, runaway and homeless youth shelters, and others. CCLD also licenses and regulates child care centers, residential care facilities for the elderly (RCFEs), and other facilities. As of June 30, 2017, CCLD licensed approximately 72,400 facilities with the total capacity to service almost 1.4 million Californians.

**Residential Care Facilities for the Elderly:** RCFEs, sometimes referred to as “assisted living facilities,” provide housing, care, supervision, and assistance with activities of daily living to individual ages 60 and older, as well as individuals under the age of 60 with compatible needs. RCFEs differ from Skilled Nursing Facilities (SNFs) in that RCFEs are considered a housing alternative, while SNFs are considered a medical facility; however, incidental medical services may be provided in RCFEs under special care plans. RCFE residents require varying levels of care and services, and RCFEs can vary widely in the services offered. Costs can range widely as well; in California in 2015, the monthly cost for a one-bedroom single occupancy unit was estimated to range from \$700 to \$10,650. The 2017 median monthly cost for a private, one-

bedroom residence in an RCFE was \$4,275. As of June 30, 2017, there were 7,282 RCFEs licensed in California, with the capacity to serve 152,352 residents. RCFEs can range in size from six beds to over 100 beds, and are licensed by DSS's CCLD.

**Referral Agencies:** A number of private referral agencies exist to connect seniors and their loved ones with residential care, including RCFEs. These referral agencies can range from local small businesses to large, internet-based agencies that provide referral services across the country. Due to the relative lack of regulation of this industry in California, it is difficult to estimate how many of these referral agencies operate in the state. While business models and practices also vary, it is common that consumers do not pay a fee to use the services of a referral agency and these individuals do not enter into a contract with the agency; instead, referral agencies typically contract with a number of RCFEs and receive a fee (often, reportedly, the amount of one month's rent in the facility) if an individual the agency has referred moves into that RCFE.

**Note:** Locating an adequate and appropriate living environment and accompanying services for an aging loved one can be confusing and, for some, daunting – particularly if accompanied by the stress of coping with a parent or other relative or friend not being able to live as independently as he or she once was able. Entities like referral agencies hold the potential to connect future residents and their family members or representatives with facilities (RCFEs) that can provide the appropriate setting and level of care, however, these types of referral agencies are largely unregulated. Such agencies often receive rather significant payments from RCFEs for successful referrals.

At the same time, it is understood that referral agencies do not play the same role as RCFEs – the former plays an important, but smaller, role in connecting individuals to potential facilities while the latter is responsible for the long-term, day-to-day safety and care of residents. As such, referral agencies arguably do not warrant the same levels of regulation and oversight that RCFEs do. Therefore, striking a balance between, on the one hand, ensuring transparency and some level of regulation while, on the other, avoiding a regulatory framework that is mismatched with the roles and responsibilities of referral agencies seems warranted.

**Argument in Support:** “The California Assisted Living Association (CALA) is pleased to support AB 2744 to bring consumer protection, transparency, and oversight to the growing senior care referral agency industry in California.

...“consumers often know little about how these agencies work and what it means to engage their services. Currently, consumers are not aware:

- How the referral agency gets paid, or even that the agency gets paid
- That referrals may be limited to only those facilities that pay the referral agency
- That their contact information will be shared with facilities (and possibly other entities)
- How the agency determines an appropriate referral
- If the agency has ever visited the facilities to which it refers
- What training or experience referral agents have

“AB 2744 would require this information to be disclosed and would also require referral agencies to carry liability insurance and establish referral agency employees as mandated elder abuse reporters.”

**Argument in Opposition:** “On behalf of A Place for Mom (APFM), I wanted to inform you that APFM is opposed to AB 2744 (Reyes) unless amended. We are pleased with the amendments taken in the Assembly Human Services Committee, which have been made so far to address many of our initial concerns on AB 2744. ...

“The remaining major issue goes to regulating the contractual terms between businesses - the facility and the referral agency. APFM cannot support a bill that seeks to regulate the contract terms between businesses.

“1569.909(c) seeks to place the decision as to which referral agency is paid onto the consumer. This is unprecedented.”

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Alzheimer’s Association  
California Assisted Living Association (CALA)

**Opposition**

A Place for Mom – Oppose Unless Amended

**Analysis Prepared by:** Barry Brewer / AGING & L.T.C. / (916) 319-3990